**THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

**WRIT PETITION No.18540 OF 2006**

**Dated: 26-04-2007**

**BETWEEN**

M/s. Kethaki Cements Pvt. Ltd.,
Plot No.7, Tulasi Gardens,
J.J. Nagar Post, Yapral,
Secunderabad, rep. by its
Managing Director,
Mr. S.R.K.K. Rangaraja Bahadur
and others.

...PETITIONERS

**AND**

A.P. State Financial Corporation,
Head Office: 5-9-194, Chirag Ali Lane,
Hyderabad, represented by its
Managing Director and others.

...RESPONDENTS

**ORDER:**

The matter relates to the sale of property of the fifth petitioner given as collateral security for the first petitioner company debt for a sum of Rs.2.52 crores by the Andhra Pradesh State Financial Corporation (for short 'the Corporation') in favour of the fourth respondent on 28.08.2006 by invoking the provisions of Section 29 of the State Financial Corporations Act, 1951 (for short 'the SFC Act') after rejecting the request of the first petitioner dated 08.08.2006 by the third respondent vide its letter dated 11.08.2006.

2. The second petitioner is the Managing Director and the petitioners 3 and 4 are the Directors of the first petitioner company and the fifth petitioner mortgaged his property – open plot admeasuring 877.77 sq. yards bearing

Plot No.443 A21, H.No.8-2-293/82/J-III/443/A/21 in Survey No.403/1 (Old) 120 (New) of Shaikpet Village and 102/1 of Hakimpet Village, situated at Road No.86, Jubilee Hills in Ward No.8, Block No.2, Hyderabad. The said property given as collateral security by way of mortgage in favour of the respondents 1 to 3 corporation, was auctioned and the fourth respondent became the highest bidder for a consideration of
Rs.252 lakhs and his highest offer was confirmed vide proceedings dated 05.09.2006 subject to certain terms and conditions.

3. The State Financial Corporation sanctioned a term loan of Rs.73.25 lakhs to the first petitioner company in 1996 and a sum of Rs.63.14 lakhs was availed by the company for the purpose of setting up a unit for manufacture of Clinker Grinding Cement at Hayathnagar. The company defaulted in payment of installments and as the company became financially sick, the respondent corporation by virtue of powers conferred under Section 29 of the SFC Act sold the primary security and adjusted the sale proceeds to the loan account of the first petitioner company and after adjusting the sale proceeds the balance outstanding is Rs.316 lakhs. The Corporation having sold the primary security proceeded further to recover the balance outstanding by proceeding against the collateral security offered by the fifth petitioner.

4. It is stated that the company requested for concession settlement of outstanding dues under One Time Settlement (OTS) Scheme vide its proposals dated 22.10.2002 for which a reply was given by the Corporation vide its letter dated 31.10.2002 stating that the Corporation agree in principal to take up the proposal and place before the Board of Directors for consideration provided the company agrees to pay a sum of Rs.93.50 lakhs including down payment of
Rs.2 lakhs and the balance crystallized liability decided by the Board shall be paid in equal installments on or before 31.03.2003 with further interest from 01.08.2002. If the company is not accepting the proposal, action will be

initiated under Section 29 of the SFC Act for sale of primary and collateral security for recovering the balance amount.

5. It is the case of the company that the said letter dated 31.10.2002 was not communicated to the company and when the second petitioner personally visited the Corporation on 04.11.2002 he was requested to come on 05.11.2002 to collect the letter and also to give his acceptance to take up the case before the Board of Directors but as the petitioner failed to turn up, the Corporation issued letter dated 18.11.202 to return the copy of the letter accepting the proposal made by its letter dated 31.10.2002 and also to pay the service charges of Rs.3,000/- and Rs.7.50 lakhs as down payment to take up necessary action for placing the proposal before the Board of Directors within seven days from the date of the receipt of the letter, failing which the Corporation will initiate action under Section 29 of the SFC Act to recover the outstanding loan of Rs.1,49,98,742/- as on 31.10.2002 by effecting seizure of primary assets and advertising them along with collateral security of open plot offered for the loan. The third petitioner addressed a letter dated 25.11.2002 stating that letter dated 18.11.2002 was received on 22.11.2002 but the letter dated 31.10.2002 said to have been enclosed was not all received and that the second petitioner is out of station since last two weeks for mobilizing funds for the OTS settlement and accordingly requested 10 more days time to respond positively to the offer of the Corporation. The Corporation vide its letter dated 06.01.2003 informed the company that as it failed to respond to pay the down payment and consent for OTS settlement of its loan account, the Corporation seized its unit on 18.12.2002 and proposed to advertise the same along with collateral security for sale for recovery of outstanding of Rs.1.50 crores. However, as a last opportunity, the Corporation gave time up to 14.02.2003 to make the down payment or to close the loan account, else the Corporation will be advertising the primary and collateral security for sale. The Company addressed a letter dated 12.01.2003 requesting for reconsideration of the OTS offer of

Rs.93.5 lakhs and extension of time for making down payment till the end of February 2003. In the said letter it was requested to consider for reduction of OTS amount contending that the market value of the collateral security offered by the petitioners along with factory land, building and machinery may not fetch more than 40 Lakhs under distress sale. Accordingly, requested to consider the time till the end of February 2003 for making the down payment of Rs.7.50 Lakhs.

6. As the company failed to avail the last opportunity given up to 14.01.2003, the Corporation by letter dated 18.01.2003 replied to the letter of company dated 12.01.2003 informing that the Corporation cannot take up the case of the company for reconsideration of OTS amount and accordingly stated that the Corporation is releasing an advertisement for sale of Primary and Collateral Securities both to realize the outstanding loan of Rs.1.50 crores with further interest. The primary assets as well as the collateral security properties have been advertised for sale in Economic Times and Eenadu on 05.05.2003 and the same was intimated to the petitioner company. The said sale notification dated 05.05.2003 for the sale of collateral security property was questioned by the fifth petitioner in W.P.No.10885 of 2003 and the sale of the property in favour of auction purchaser was set aside on the ground that the name of the owner of collateral security property i.e. the fifth petitioner, was wrongly printed in the ownership column. It was also contended by the fifth petitioner that the Corporation cannot sell the collateral security property before selling the primary assets offered by the company. The Corporation as well as the auction purchaser by appeal in W.A.Nos.2045 and 2267 of 2003 and 1305 of 2004 questioned the order of the learned Single Judge and the Division Bench dismissed the said appeals by order dated 24.04.2006. While dismissing the writ appeals the Corporation was given liberty to undertake fresh exercise for sale of the property mortgaged by the fifth petitioner herein and also permitted the fifth respondent to participate in the auction by depositing a sum of

Rs.5 Lakhs with the Corporation within a period of month from the date of the said order. It is also pertinent to note that in the said judgment, the fifth petitioner has taken a plea that the Corporation is not entitled to sell the collateral security property before selling the primary security offered by the company but failed to get any relief either before the learned single Judge or before the Division Bench.

7. The company thereafter issued a telegram followed by a letter dated 04.08.2006 requesting to suspend the sale auction proceedings of collateral securities as the company is ready for settlement under OTS. Accordingly, the company addressed a letter dated 08.08.2006 offering Rs.55 Lakhs towards OTS and the deposit of Rs.5 Lakhs made by the fifth petitioner shall be treated as part of first installment.

The Corporation shall recover a total of Rs.137.97 Lakhs under the interest recovery from term loan adjustment a sum of Rs.11.95 Lakhs, Rs.26.59 Lakhs under interest recovery subsidy, Rs.44.25 Lakhs under recovery from auction sale of primary security and Rs.55 Lakhs under the present offer. The property in question was again notified for auction in Deccan Chronicle daily newspaper on 10.08.2006 for sale of collateral security properties i.e. the aforesaid open plot belonging to the fifth petitioner. The request of the company vide its letter dated 08.08.2006 was also rejected by the impugned letter dated 11.08.2006 which reads as follows:

> "**Sub: M/s. Kethaki Cements Pvt. Ltd., - Initiation of recovery action in pursuant to the orders issued by the Honourable High Court in W.A.Nos.2045, 2267 of 2003 and 1305of 2004 in W.P.No.10885 of 2003 – Reg.**
>
> **Ref: Your letter dated 08-08-2006**
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> * * *
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> With reference to the above and in pursuant to the orders issued by the Honourable High court in W.A.Nos.2045, 2267 of 2003 and 1305 of 2004 in W.P.no.10885 of 2003, the Corporation has already initiated auction afresh for sale of the property offered as collateral security by Sri Bh. Sudhir Varma to your term loan. Hence, your mentioned in the above letter for settlement of the loan account under OTS is regretted by our Management"

The petitioner company questions the said letter dated 11.08.2006 rejecting their request dated 08.08.2006 for OTS stating that the auction of the property of the fifth petitioner in favour of the fourth respondent is illegal and arbitrary.

8. Pursuant to the advertisement released on 10.08.2006 for sale of the collateral security property, the fifth petitioner also participated in the auction proceedings by depositing a sum of Rs.5 Lakhs and offered Rs.95 Lakhs as against the offer of the fourth respondent at Rs.2.52 crores. Pursuant to the said offer the Corporation issued a notice dated 28.08.2006 to the general public calling for fresh tenders on or before 04.09.2006 and as no fresh tenders were received,

the highest offer of the fourth respondent was accepted by proceedings dated 05.09.2006 subject to certain terms and conditions directing the fourth respondent to pay the sale consideration of Rs.252 Lakhs within 120 days i.e. on or before 02.01.2007. 25% of the sale consideration comprising Rs.58 Lakhs shall be paid with 45 days on or before 19.10.2006 excluding EMD of Rs.5 Lakhs and the balance 75% of sale consideration i.e. Rs.189 Lakhs shall be paid on or before 02.01.2007. If the fourth respondent fails to make full payment and take possession of the same within the stipulated time on 02.01.2007 interest shall be levied for the delayed period as per the procedure of the Corporation otherwise the Corporation reserves its right to cancel the sale during the delayed period.

9. The fourth respondent submits that pursuant to the said confirmation letter dated 05.09.2006 he paid a sum of Rs.10 Lakhs on 15.09.2006 and the remaining amount of Rs.48 Lakhs on 18.10.2006 towards 25% of the sale amount and he was required to pay a sum of Rs.1.89 crores on or before 02.01.2007, for which he applied and obtained term loan from the State Bank of India, which is evident from the letter and agreement dated 20.10.2006 issued by the Bank.

10. This Court while admitting the writ petition on07.09.2006 granted interim direction, which reads as follows:

> "If the writ petitioners' property has been sold in exercise of powers under Section 29 of the State Financial Corporations Act, 1951, for realization of the debt due to the respondents, the sale shall be subject to the result of the writ petition."

Thus, there is no stay with regard to the sale of the property and it is not known as to why the fourth respondent has not deposited 75% of the sale consideration. Merely because there is an order of this Court that the sale of the said property will be subject to the result of the writ petition, there is no impediment or legal objection for completion of the sale transaction.

11. Learned counsel for the petitioners submits that the petitioner company was inclined to settle the loan account under OTS and the offer of the company by its letter dated 08.08.2006 was not at all considered and rejected, but a regret letter dated 11.08.2006 has been issued which is only pursuant to the orders of this Court.

He further submits that the Corporation is not entitled to sell the collateral security property of the fifth petitioner by invoking the provisions of Section 29 of the SFC Act but the only course open to it is to take action under Section 31 of the SFC Act. He further submits that the said property was given as surety by fifth petitioner by way of mortgage, therefore, the property of the surety holder cannot be disposed of in accordance with Section 29 of the SFC Act but it shall be dealt with only in accordance with Section 31 of the SFC Act.

12. Insofar as the first contention is concerned, the question that arises for consideration is as to whether the offer of the Corporation for OTS continues to hold good even after the disposal of the writ petition filed by the fifth petitioner in W.P.No.10885 of 2003 dated 26.09.2003 as confirmed in W.A.Nos.2045, 2267 of 2003 and 1305 of 2004 by order dated 24.04.2006 and the withdrawal of W.P.No.17264 of 2006 dated 08.09.2006 filed by the

fifth petitioner questioning the notification dated 10.08.2006 for sale of his property offered as collateral security; entitling the company for consideration of its request dated 08.08.2006.

13. Admittedly, the company failed to avail the opportunity to accept the offer of the Corporation vide letter dated 18.11.2002 for OTS for a sum of Rs.93.50 Lakhs with down payment of Rs.7.50 Lakhs so as to place its case before the Board of Directors of the Corporation for their decision and even the last opportunity given vide letter of the Corporation dated 06.01.2003 giving time up to 14.01.2003 to make the down payment was also not availed. Therefore, it cannot be said that the offer of the Corporation for consideration of OTS for a sum of Rs.93.50 Lakhs still continues, more so, when the property was notified for auction vide sale notification dated 05.05.2003. The fifth petitioner questioned the sale notification by way of W.P.No.10885 of 3003 on the ground that he was not given adequate and effective notice and the writ petition was allowed only on the ground that there was wrong description of the owner of the property offered as collateral security. In fact, the fifth petitioner also contended that the sale of collateral security property before the sale of primary security offered by the company is arbitrary and unjustified and the Corporation has deliberately got his name wrongly printed in the column of ownership and that there was some dispute with regard to the said property in the civil Court. The matter was carried in appeal and the Division Bench of this Court kept it open to the Corporation to undertake fresh exercise for the sale of the property mortgaged by the fifth petitioner and as a condition precedent to permit him to participate in the fresh auction proceedings by depositing a sum of Rs.5 Lakhs, therefore, there was no obstruction or legal impediment for the Corporation to proceed with the sale of collateral security property. However, as the offer was not at all pending, I am of the opinion that the Corporation vide its letter dated 11.08.2006 rightly regretted to consider the request of the company for settlement of the loan account under the OTS. Therefore, it cannot be said

that the Corporation regretted to consider the request of the company pursuant to the orders of this Court alone. As per the orders of this Court there was no legal impediment to proceed with the auction for fresh sale of the property offered as collateral security but at the same time it cannot be said the offer made by the Corporation still continues and subsists. As already stated, the petitioner company failed to avail the opportunity given to it even by the last date up to 14.01.2003.

Even the letter dated 08.08.2006 of the company requesting to consider the settlement of outstanding dues under OTS is not a letter accepting the offer of the Corporation at Rs.93.50 Lakhs but to reconsider the present offer of the company at Rs.55 Lakhs alone. Therefore, I am of the opinion that the question of considering the offer of the company for a sum of Rs.55 Lakhs as per its request dated 08.08.2006 does not arise and the respondent Corporation rightly regretted for settlement of the loan account under the OTS. However, pursuant to the orders of this Court there cannot be any legal impediment to initiate action for fresh sale of the property offered by the fifth petitioner as collateral security.

14. With regard to the other contention of the learned counsel for the petitioners that the fifth petitioner filed W.P.No.10885 of 2003,which was allowed and upheld in W.A.Nos.2045, 2267 of 2003 and 1305 of 2004 with regard to the action of the Corporation in erroneously selling the property without giving adequate and effective notice and therefore, this Court set aside the sale of the said property. Insofar as the writ petition in W.P.No.17264 of 2006 is concerned it was filed questioning only the issuance of sale notification dated 10.08.2006 for sale of collateral security property. Therefore, as the action of the Corporation in auctioning the property of the fifth petitioner by rejecting the request of the company dated 08.08.2006 vide letter dated 11.08.2006 is questioned in the present writ petition, W.P.No.17264 of 2006 was dismissed as withdrawn on 08.09.2006, therefore, the said order cannot operate as res judicata or constructive res

judicata for the relief claimed in this writ petition.

Under Explanation VI to Section 11 of the Code of Civil Procedure, 1908 any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Under Section 11 of CPC no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same titled, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. In the instant case, the fifth petitioner having filed W.P.No.17234 of 2006 questioning the sale notification dated 10.08.2006 for sale of the property offered as collateral security by the fifth petitioner without considering the representation of the company dated 08.08.2006 as illegal and arbitrary, I am of the opinion that the petitioners cannot file the present writ petition for the self same relief, in fact, questioning the sale notification dated 10.08.2006 in not considering its representation dated 08.08.2006, which was rejected by the Corporation vide its letter dated 11.08.2006. The Supreme Court in **STATE OF UP v. NAWAB HUSSAIN**[1] at Para 8 held as follows:

> "……..It is also not in controversy that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contented himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata……."

I am of the opinion that the aforesaid principle laid down by the

Supreme Court equally applies to the case on hand as it was within the exclusive knowledge of the petitioner as on the date of the filing W.P.No.17264 of 2006, about the rejection of request of the company dated 08.08.2006 by the Corporation vide its letter dated 11.08.2006, therefore, it is not permissible to the petitioners to challenge once again the rejection of the renewed request of the company dated 08.08.2006 and the consequential auction of collateral security property offered by the fifth petitioner, in the present writ petition; more so, when W.P.No.17264 of 2006 was dismissed as withdrawn without any leave of the Court to file a fresh writ petition.

15. Insofar as the contention of the petitioners that it is not open to the Corporation to sell collateral security property of the fifth petitioner under Section 29 of the SFC Act and that the only course open to the Corporation is to invoke the provisions of Section 31 of the SFC Act for enforcing the liability of the surety; it is pertinent to note that under Section 29(1) of the SFC Act where any industrial concern, which is under a liability to the Financial Corporation, under an agreement, makes any default in repayment of any loan or advance or any installment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. As per Section 29(1) of the SFC Act there cannot any doubt that in default of payment of the liability by the industrial concern, it is open for the Corporation to take over the management or possession or both as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. It is not in dispute that the property in dispute belonging to the fifth petitioner was mortgaged as collateral security in favour of the Corporation. Under Section 31 of the SFC

Act the Corporation is entitled to take action in addition to its powers under Section 29 of the SFC Act and without prejudice to the provisions of Sections 29 of the SFC Act and of Section 69 of the Transfer of Property Act, 1882 and is also entitled to apply to the District Judge for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance or for enforcing the liability of any surety or for transferring the management of the industrial concern to the financial corporation or for ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended. Therefore, if an action is taken under Section 31 of the SFC Act then it may not be just and proper to take recourse under Section 29 of the SFC Act without exhausting the remedy under Section 31 of the SFC Act in respect of the action already initiated. But absolutely there cannot be any prohibition on the part of the Corporation to exercise its powers under Section 29 of the SFC Act for realization of the properties of the industrial concern as well as the property pledged, mortgaged, hypothecated or assigned to the Corporation. It is not in dispute that the property in question was mortgaged in favour of the Corporation. It is also not in dispute that the fifth petitioner has not offered himself as surety holder for repayment of the loan but he has given his specific property as security by way of mortgaging the same in favour of the Corporation. Therefore, it is not a question of enforcing the liability of the surety as contemplated under Section 31(1)(aa) of the SFC Act.

16. Section 31(1)(aa) of the SFC Act is applicable for enforcing the liability of any surety, who has given personal guarantee but in the instant case, the fifth petitioner has not given any personal guarantee so as to invoke the provisions of the Section 31(1)(aa) of the SFC Act to proceed against the personal properties of the fifth petitioner for applying to the District Judge for sale of the personal properties. In the instant case, the property in question

was mortgaged as collateral security; therefore, it will not come within the ambit of Section 31(1)(aa) of the SFC Act. However, insofar as the properties pledged, mortgaged, hypothecated or assigned as security for the loan or advance in respect of the industrial concern is concerned, it is open for the Corporation to take action under Section 29 of the SFC Act as well as under Section 31 of the SFC Act. In the instant case, the Corporation has chosen to take action under Section 29 of the SFC Act; therefore, I am of the opinion that the petitioner company cannot compel the Corporation to invoke the provisions of Section 31 of the SFC Act alone but not Section 29 of the SFC Act.

17. Learned counsel for the petitioners heavily relied on a Division Bench judgment of the Karnataka High Court in **N. NARASIMAHAIAH V. KARNATAKA STATE FINANCIAL CORPORATION**[2] wherein it was held that under Section 29 of the SFC Act the Corporation has no power to take over the possession or management of the property of the surety secured in favour of the Corporation and the Corporation need not first proceed against the principal borrower (industrial concern) and only when it is unable to recover the dues from the industrial concern, it can enforce the liability of the surety.

The liability of the surety cannot be enforced without approaching the civil Court by initiating action under Section 31 of the SFC Act.

18. I am of the opinion that the property of the surety holder, which has not been pledged, mortgaged, hypothecated or assigned, cannot be sold or realized under Section 29 of the SFC Act but if the property is given as security by way of pledging, mortgage, hypothecation or assignment, it is open for the Corporation to sell the same under Section 29 of the SFC Act. It is pertinent to note that the property pledged, mortgaged, hypothecated or assigned to the Corporation,

as security for loan or advance is different and distinct from that of a liability

of a surety holder. Anybody can offer surety in his personal capacity without specifically pledging, mortgaging, hypothecating or assigning a particular property. If any particular property is pledged, mortgaged, hypothecated or assigned it is for the Corporation to proceed against the said secured property under Section 29 of the SFC Act as well as Section 31 of the SFC Act. But the Corporation cannot proceed against particular properties of surety holder which were not specifically pledged, mortgaged, hypothecated or assigned, however, the Corporation can proceed against the personal properties of the surety holder under Section 31 of the SFC Act by applying to the District Court for enforcing the liability of any surety. Insofar as the personal properties of the surety holder, which have not been specifically pledged, mortgaged, hypothecated or assigned the only course open to the Corporation is to proceed under Section 31 of the SFC Act alone. However, the said Division Bench judgment of Karnataka High Court has been stayed by the Supreme Court in SLP (Civil) No.15423-15427 of 2003 by order dated 27.01.2004.

19. Insofar as the right of the Corporation to transfer by way of lease or sell or realize the propertied pledged, mortgaged, hypothecated or assigned to the Financial Corporation is concerned the Supreme Court in **ANDHRA PRADESH STATE FINANCIAL CORPORATION v. M/S. GAR RE-ROLLING MILLS**[3] held that if the Corporation must be held entitled and given full protection by the Court to recover its dues it cannot be bound down to adopt only one of the two remedies provided under the SFC Act. The Corporation can initially take recourse to Section 31 of the SFC Act but withdraw or abandon it any at any stage and take recourse to the provisions of Section 29 of the SFC Act, which Section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the SFC Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the

order or decree, in the manner provided by Section 32(7) and (8) of the SFC Act. However, a decree under Section 31 of the SFC Act not being a money decree or a decree for realization of the dues of the Corporation, recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the SFC Act by not pursuing the decree or order under Section 31 of the SFC Act, in which event the order made under Section 31 of the SFC Act, would serve in aid of the relief available under Section 29 of the SFC Act. The right vested in the Corporation under Section 29 of the SFC Act is besides the right already possessed at common law to institute a suit or the right available to it under Section 31 of the SFC Act.

20. The Division Bench of this Court in W.P.No.403 of 2004 dated 21.06.2005 also repelled the similar argument that Section 29 of the SFC Act cannot be invoked by the Corporation to sell the property which was offered as collateral security holding that the properties offered as collateral security by way of pledging, mortgage, hypothecation or assignment can be sold in terms of Section 29 of the SFC Act without taking recourse to Section 31 of the SFC Act. Since, admittedly, the property of the petitioners has been mortgaged to the Corporation by way of collateral security on behalf of the company,

I do find fault with the respondent Corporation in taking action under Section 29 of the SFC Act. Therefore, I do not see any merits in any of the contentions of the learned counsel for the petitioners and the writ petition is liable to be dismissed.

21. However, the request of the petitioners to set aside the auction notification dated 28.08.2006, wherein the fourth respondent became highest bidder offering Rs.252 Lakhs as confirmed by the Corporation vide its letter 05.09.2006, that too without prejudice to their rights to review/renew the OTS settlement, at this juncture, cannot be considered as the offer of Rs.252 Lakhs of the fourth respondent was already accepted and sale was also confirmed vide proceedings dated 05.09.2006 subject to certain terms and

conditions mentioned therein. However, as per the terms and conditions of confirmation of sale dated 05.09.2006 the fourth respondent has to pay the balance 75% of sale consideration i.e. Rs.189.00 Lakhs on or before 02.01.2007 and there is no justification on the part of the respondents 1 to 3 in not collecting the said amount from the fourth respondent and also there is no justification on the part of the fourth respondent in not paying the said amount. Therefore, I am of the opinion that Corporation cannot collect the interest from the petitioners to an extent of Rs.189 Lakhs of the outstanding amount, if any, still payable by the petitioners. It is for the Corporation to take appropriate action to collect any interest from the fourth respondent on the balance sale consideration of Rs.189 Lakhs from 03.01.2007 or take appropriate action as per the terms and conditions of letter dated 05.09.2006.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

April 26, 2007
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[1] AIR 1977 SC 1680

[2] AIR 2004 KARNATAKA 46

[3] AIR 1994 SC 2151